

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.9501 OF 2004

Arvind Patel and Ors. ..Petitioners

Vs.

Nampelli Mergu ..Respondent

.....
Mr.Abhay Kulkarni with Ms.Seema Chopda and T.R.Yadav
for Petitioners
Mr.K.S.Bapat for Respondent
.....

CORAM : B.H.MARLAPALLE, J.
DATE : APRIL 8, 2005

P.C.:

1. Heard Mr.Abhay Kulkarni with Ms.Chopda, the learned counsel for the Petitioners and Mr.Bapat, the learned counsel for the Respondent-complainant who had approached the Labour Court and filed Complaint (ULP) No. 91 of 2001. Rule. Respondent waives service. Petition is taken up for final hearing forthwith. It appears that inspite of service of notice, the Petitioners who were impleaded as Respondents in the Complaint did not take steps to cause their appearance and contest the case. As a result of which, the complaint came to be decided on 10.1.2002. It was allowed and the present Petitioners were directed to reinstate the complainant with full backwages and continuity of service with effect from 30.11.2000.

2. The Petitioners filed Misc. Application (ULP) No. 4 of 2002 and prayed for restoration of the complaint decided exparte. In support of the said application, it was contended that on account of devastating earthquake in Gujrat that had taken place on 26.1.2001, the petitioners were pre-occupied and were required to visit Ahmedabad very frequently. Though they had received the notice in the complaint filed on 27.2.2001, they could not cause their appearance and file written statement etc. The Labour Court was not impressed with this reasoning and it dismissed the application after recording the evidence by its order dated 16.4.2003. Being aggrieved the petitioners filed Revision Application (ULP) No. 30 of 2004 and the same also came to be dismissed by the Industrial Court at Thane on 22.9.2004.

3. In support of the application for restoration, it was pointed out by the Petitioners that the complainant had approached the Industrial Court in Complaint (ULP) No. 515 of 2000 before he had approached the Labour Court and the said complaint was dismissed on 21.6.2000, as not being maintainable in the absence of the employer-employee relationship. A perusal of this order shows that the complaint was filed by the trade Union i.e. the Textiles Mazdoor Sabha Bhiwandi and the Union could not lead evidence

to establish the existence of master and servant relationship. The Restoration Application was beyond time by about 15-20 days and delay was condoned. Under such circumstances, the reasoning given by the Labour Court in disallowing the Restoration Application is indefensible and the Industrial Court while deciding the Revision Application also noted that the Petitioners had failed to make out sufficient cause for their lapse in not contesting the complaint before the Labour Court filed subsequently. The Industrial Court also noted that the Petitioners had not given any other reason except the business difficulties in support of the Restoration Application. It is seen from the record that the pleading in the Restoration Application is specific and it was necessary for the Industrial Court to step in so as to get the complaint decided on merits specially on the face of its earlier order regarding absence of employer-employee relationship. The Industrial Court could have levied exemplary costs while doing so.

4. In the premises this petition succeeds and the same is hereby allowed. The impugned orders are hereby quashed and set aside. Misc. Application (ULP) No.4 of 2002 stands allowed and Complaint (ULP) No. 91 of 2001 is hereby restored to the file of the Labour Court at Thane but subject to payment of costs

quantified at Rs.5,000/-. The costs amount be remitted to the Legal Services Authority of this Court within a period of two weeks.

5. The restored complaint shall be heard and decided as expeditiously as possible and preferably within a period of six months from the date of first appearance of the parties. The petitioners to appear before the Labour Court on 25.4.2005 along with their written statement.

6. Rule made absolute accordingly.

[B.H.MARLAPALLE, J.]